

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1482

In the United States Court of Appeals

For the Second Circuit

No. 77-1482

UNITED STATES OF AMERICA,

Appellee

vs.

HARRY FINEROW and LARRY PUTZER,

AND JOINED IN BY RAY ADAMIAK *Appellants*

*Appeal From the United States District Court for
the Southern District of New York.*

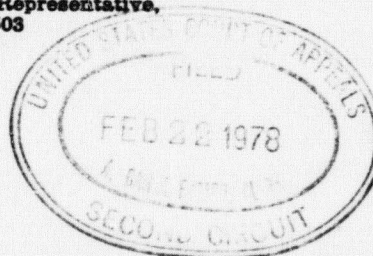
APPELLANTS' APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE APPLICATION :
OF THE UNITED STATES FOR AN ORDER :
AUTHORIZING THE INTERCEPTION OF :
WIRE COMMUNICATIONS. :

AFFIDAVIT

ML9-97(56)

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

CARL W. AMADITZ, Special Agent, Federal Bureau of
Investigation, New York, being duly sworn, states:

1. I am an "investigative or law enforcement
officer . . ." of the United States within the meaning of
Section 2510(7) of Title 18, United States Code, that is,
an officer of the United States who is empowered by law to
conduct investigations of and to make arrests for offenses
enumerated in Section 2516 of Title 18, United States Code.

2. I make this affidavit in support of an appli-
cation which seeks authorization to intercept wire communi-
cations concerning offenses involving violations of Section
1955 of Title 18, United States Code, and a conspiracy to
violate the said statute in violation of Section 371 of Title
18, United States Code, which have been and are being commit-
ted by ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN
FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM
LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY"
FRIELICH, ROBERT HANNON, and other persons associated with
them whose identities are as yet unknown.

3. I have supervised the conduct of the investigation of these offenses for approximately six months, and as a result of my personal participation in that investigation and of reports made to me by Special Agents of the Federal Bureau of Investigation under my direction, I am familiar with all the circumstances of the offenses. I have discussed this matter with attorneys for the United States Attorney's Office for the Southern District of New York, and in particular with Assistant United States Attorney T. Gorman Reilly. On the basis of that familiarity, I allege the facts contained in the numbered paragraphs below to show that:

a) There is probable cause for the belief that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, ROBERT HANNON, and others as yet unknown, have committed and conspired to commit, are committing and conspiring to commit, and will commit and conspire to commit offenses involving the conducting, financing, managing, supervising, directing, or owning of all or part of an illegal gambling business in which five or more persons are participating and which has a gross revenue of \$2,000 or more in any single day or has been in substantially continuous operation for over thirty (30) days, thereby being in violation of Article 225, Sections 225.0 through 225.4 of the New York State Revised Penal Law, and also in violation of Sections 1955 and 371 of Title 18, United States Code.

b) There is probable cause to believe that particular wire communications of ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, LEWIS a/k/a

"LARRY" FRIELICH, and others as yet unknown, concerning these offenses, will be obtained through the interception of these wire communications, authorization for which is herein applied for. In particular, these wire communications will reveal the identities, roles of all participants in the illegal gambling business, the locations at which the principal participants operate from, the amounts of monies owed to or by bettors and other participants in the illegal gambling business, the distribution of contraband monies and records obtained by and used in the illegal gambling business, the methods of record-keeping and the meaning thereof, the methods of operation used by participants in the gambling enterprise and the full nature and scope of the conspiracy involved therein. In addition, the communications are expected to constitute admissible evidence of the offenses.

c) There is probable cause to believe that particular communications concerning these offenses will be obtained through the interception of wire communications to and from the following telephone lines:

- (1) 914-794-3244, listed to Debra Scialabba, 123 Terry Lane Apartment 123, Monticello, New York
- (2) 914-794-8026 listed to Gil Hellinger, 74 Florida Building, The Delano Hotel, Old Liberty Road, Monticello, New York
- (3-4) 914-647-3442 and 914-647-3412, listed to Lewis Frielich, Apartment 29B, Nevele Road, Ellenville, New York
- (5-6) 914-647-6691 and 914-647-6358, listed to Morris Melavsky, 16 Sandra Street, Ellenville, New York

d) There is probable cause to believe that the above-listed telephone lines have been used, are being used and will be used by the following individuals, and others

yet unknown, in connection with the commission of the above-described offenses:

- (1) 914-794-3244 used by ROBERT LOEWINGER, NORMAN WERTHEIMER, and AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244;
- (2) 914-794-8026 used by SAM LEVENTHAL;
- (3-4) 914-647-3442 and 914-647-3412 used by LEWIS a/k/a "LARRY" FRIELICH.
- (5-6) 914-647-6691 and 914-647-6358 used by MORRIS MELAVSKY.

e) Normal investigative procedures have been tried and failed and reasonably appear unlikely to succeed if tried further.

f) No previous applications are known to have been made to any judge for authorization to intercept or for approval of interception of wire or oral communications involving any of the persons, facilities, or places specified herein except as enumerated below:

- (1) County Judge William Deckelman, Sullivan County, New York, authorized the interception of wire communications of ROBERT LOEWINGER and others not involved herein over telephone number 914-794-4491, listed to Wilson Walker, 338 Broadway, Monticello, New York, from August 18, 1969, through September 17, 1969.
- (2) County Judge William Deckelman, Sullivan County, New York, authorized the interception of wire communications of ROBERT LOEWINGER and others not involved herein over telephone numbers 914-794-6143 and 914-794-5012, listed to William Logan, Town and Country Cottages, Route 42, Monticello, New York, from August 18, 1969, through September 17, 1969.

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(3) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of NORMAN WERTHEIMER, ROBERT LOEWINGER, and others not involved herein over telephone number 914-434-8159, listed to Norman Wertheimer, Thompsonville Road, Fallsburgh, New York, from July 27, 1970 through September 26, 1970.

(4) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of SAM LEVENTHAL, NORMAN WERTHEIMER, and others not involved herein over telephone number 914-794-2258, listed to Harry Green, Town and Country Bungalows, Monticello, New York, from September 21, 1973 through October 20, 1973.

(5) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of SAM LEVENTHAL, NORMAN WERTHEIMER and others not involved herein over telephone number 914-794-9703, listed to County Seat Social Club, 46 Jefferson Street, Monticello, New York, from September 6, 1974, through October 5, 1974.

(6) County Judge Benjamin Newberg, Sullivan County, New York, authorized the interception of wire communications of NORMAN WERTHEIMER, ROBERT LOEWINGER, and others not involved herein over telephone number 914-794-8353, listed to Arlene Glatzer, 14 Burton Avenue, Monticello, New York, from September 6, 1974 through October 5, 1974.

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(7) Acting County Judge Louis B. Scheinman, Sullivan County, New York, authorized the interception of wire communications of NORMAN WERTHEIMER and others not involved herein, over telephone number 914-794-9188, listed to the Omega Social Club, 96 Broadway, Monticello, New York, from August 5, 1976 to September 3, 1976.

4. I have been a Special Agent of the Federal Bureau of Investigation for six years and nine months, and based on my experience in the investigation of gambling matters during the past six years, and based on the experience of other Agents of the Federal Bureau of Investigation, I allege the following:

- a. A bookmaker is an individual engaged in the business of accepting wagers from others on sporting events and/or horse races. A bookmaker can either accept wagers himself or operate through other people working for him. The telephone is an essential and integral tool of the bookmaker in conducting his business and secreting himself from police detection. The use of the telephone allows the bookmaker to keep in touch with his employees so that he may make the decisions necessary to insure a profit, to rapidly ascertain the latest changes in the odds on sporting events, and immediately disseminate that information to his employees, who accept wagers from the betting public. Almost all bookmaking business is conducted by telephone.
- b. In order for a sports bookmaker to make a profit and stimulate betting activity, it

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is necessary for him to obtain "line" information. The "line" is the point spread or odds on a sporting event, and is obtained by telephone from a professional handicapper, or from someone in contact with him during the day. The handicapper studies each team in a given contest, determines which one is the weaker, and what margin that team is likely to lose by. The weaker team is then given enough points to make it as likely to win as the stronger team, attracting bets on both teams. The "line" is generally obtained each morning, and changes occur throughout the bookmaking week. In order for a bookmaker to stay up-to-date on the latest "line" changes he must have constant access to a telephone, so that he may obtain new information as it is available. Much of the "line" information originates in Nevada, because many professional handicappers work there, due to the fact that Nevada has legalized most forms of gambling; however, the "line" is usually adjusted regionally by local line service men who obtain information on local professional and college sporting events and team rosters.

c. In order to balance his books, the bookmaker attempts to reinsure himself by "laying off" bets on a favorite in excess of those placed on the remainder of the participants in a contest, that is, betting them

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again with another bookmaker who is willing to accept the additional "action". The bets thus reinsured are known as "lay offs" or "lay off bets." The bookmaker almost always uses the telephone to place his lay-offs because timing is crucial to this aspect of the bookmakers activities. The bookmaker decides what bets to lay-off after all the wagers have been placed. In turn he must place these lay offs with another bookmaker prior to the start of a sporting event or horse race.

d. The wireroom of a gambling operation is a location where "the action" is received from bettors over the telephone. Also the "action" or wagers are tallied and records kept during hours of operation.

e. Bookmakers often employ other persons as their agents. Those agents have their own customers who are not always known to the bookmaker or his co-workers in the bookmaking operation. These customers bet into the operation through an agent. Consequently, the agent shares in the profits of the bookmaking operation based upon the amount of betting action which he turns over to the bookmaker.

f. Bookmakers sometimes employ persons to answer telephones in the wire room and accept and record the wagers. This person is known as a clerk.

g. Bookmakers sometimes use an answering service similar to that used by professional people such as doctors. The bettors will call the answering service number and leave a message. The service will then contact the bookmaker, or vice-versa. In turn, the

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bookmaker will then contact the bettor to obtain the wager. This allows the bookmaker the flexibility of conducting his operation from more than one physical location. It also adds greatly to the security of the operation and reduces the chances of detection since only the answering service will know the wire-room number.

h. Betting is usually conducted by telephone on a credit basis; i.e. a bettor is not required to put up any cash in advance of the event being wagered on. The telephone is particularly attractive both to the bettor and the bookmaker because of the security and the convenience. The bookmaker is able to attract a large clientele and the bettor generally finds it a more convenient way to place wagers. The only personal contact between the bettor and the bookmaker, or between bookmakers, is when they "settle up" accounts, or in other words, when they account for bets previously placed, and money owed by either party is paid.

5. All informant information in this affidavit has been related verbally to either the affiant, a named Special Agent of the Federal Bureau of Investigation, or a named Investigator of the New York State Police. In those instances where information was not obtained directly by the affiant, it was communicated to the affiant by the named Special Agent or Investigator. Where no name is given, the information was related directly by the informant to the affiant.

FACTS ESTABLISHING PROBABLE CAUSE

6. The facts for this application are derived in part from four confidential informants of the Federal Bureau of Investigation and one confidential informant of the New York State Police. These informants hereinafter will be referred to as Mr. A, Mr. B, Mr. C, Mr. D, and Mr. E.

7. Mr. A is a reliable informant who has been furnishing information concerning state and local offenses, including gambling offenses, to the New York State Police for a period in excess of ten years. He has been contacted by investigators of the Bureau of Criminal Investigation, New York State Police, on a regular basis. The information he has given has been corroborated by independent investigation and has always proved to be accurate. This information has led to over ninety convictions for violations of New York State gambling laws.

8. Mr. B is a reliable informant who has been furnishing information concerning Federal offenses, including gambling offenses, to the Federal Bureau of Investigation for a period in excess of one year. This individual has been contacted by agents of the Federal Bureau of Investigation on at least a bi-weekly basis, and the information he has given has been corroborated by independent investigation and has always proved to be accurate. This information has resulted in at least four arrests and convictions for gambling violations.

9. Mr. C is an informant who has been supplying information concerning Federal offenses to the Federal Bureau of Investigation for a period in excess of one year, on at least a monthly basis. I have found Mr. C's information to be extraordinarily correct. Specific examples of information Mr. C has given, the manner in which it has been

corroborated and its proven reliability, are as follows:

a. Mr. C advised that Sam Leventhal is also known to him as "Sam the Cop". Based upon my discussions with Senior Investigator Joseph Tripodo, New York State Police, Detective Sergeant Daniel Hogue, Monticello, Police Department, and other members of law enforcement agencies in Sullivan County, New York, I know that LEVENTHAL is commonly referred to as "Sam the Cop".

b. Mr. C advised that LEVENTHAL was actually a former police officer. Special Agent August J. Micek confirmed the information through records of the New York City Police Department.

c. Mr. C advised that Leventhal drove a white over burgundy Cadillac with New York State license plate 472-YNK until early December of this year when he purchased a yellow Cadillac. My observations have placed LEVENTHAL in the former vehicle prior to December 5, and in the latter vehicle subsequent to December 6, 1976. In addition, a registration check disclosed that license 472-YNK is registered to one Irene Leventhal, Colonial Hill Apartments, Monticello, New York.

d. Mr. C advised that LEVENTHAL frequents the social club which is located across from the town garage on Jefferson Street, Monticello, on almost a daily basis. My observations have placed LEVENTHAL at this location on numerous occasions.

e. Mr. C advised that he has observed a pay telephone inside this social club and that the number is 794-9703. The 1976 Sullivan County telephone directory shows that number 794-9703 is listed to the Colonial Social Club, Inc., 46 Jefferson Street, Monticello, New York.

10. Mr. D is a reliable informant who has been furnishing information concerning gambling offenses to the Federal Bureau of Investigation for a period in excess of one year. This person has been contacted by agents of the Federal Bureau of Investigation on a weekly basis, and the information he has given has been corroborated by independent investigation and has always proved to be accurate. This information has resulted in five arrests and five convictions for gambling violations.

11. Mr. E is a reliable informant who has been furnishing information concerning Federal and state offenses, including gambling offenses, to the Federal Bureau of Investigation for a period in excess of two years. This individual has been contacted by agents of the Federal Bureau of Investigation on at least a monthly basis. The information he has given has been corroborated by independent investigation and has proven to be accurate. This information has resulted in seven convictions for gambling violations.

12. For the Court's convenience, the information provided by confidential informants and investigation conducted by the Federal Bureau of Investigation will follow in three distinct sections due to the numerous subjects and

telephones involved in this investigation. These sections will be entitled "Loewinger Operation", "Leventhal Operation" and "Melavsky Operation". In addition where independent investigation corroborates information furnished by a confidential informant, the corroborative information will appear in the same section.

A. LOEWINGER OPERATION

13. On June 22, 1976 Special Agent Frank J. Meyers was advised by the Security Officer of the New York Telephone Company and Special Agent Meyers in turn advised me that its records reveal that 914-794-3244, an unpublished number, is subscribed to by Debra Scialabba, 123 Terry Lane, Apartment 123, Monticello, New York, that the telephone was connected on February 3, 1976, and that the subscriber lists her occupation as unemployed.

14. On December 9, 1976, I entered the premises known as 122-127 Terry Lane, Sleepy Hollow Apartments, Monticello, New York. I observed 6 mailboxes at this location, one bearing the name "Scialabba #123."

15. On December 9, 1976, I examined voter records at the Board of Elections, Sullivan County Government Center, Monticello, New York. There was one record pertaining to a Debra A. Scialabba, born May 18, 1953. On the date of registration, May 13, 1975, this individual listed an address of 43 Moon Manor Apartments. On the same date, I also examined voter records for one Thomas J. Scialabba, born January 20, 1950. This individual registered to vote on December 18, 1975, and at that time listed an address of 123 Terry Lane, Monticello, and a previous address of 43 Moon Manor, Monticello.

16. Mr. A is a personal acquaintance of ROBERT LOEWINGER, NORMAN WERTHEIMER, and SAM LEVENTHAL (also known

as SAM THE COP), who are all involved in the gambling operation described herein. Mr. A provided the below information to Senior Investigator Joseph Tripodo, New York State Police, during the period from early July 1976 through the second week of December 1976:

a. Mr. A advised Senior Investigator Tripodo who in turn advised me that on the basis of his own betting activities he knows that BOBBY LOEWINGER, and NORMIE WERTHEIMER operate a bookmaking and sports gambling operation; that it has been in substantially continuous operation since at least sometime before July 1976; that LOEWINGER and WERTHEIMER have operated through the use of an answering service during this period; and that the telephone number of the answering service, 914-794-3244, was given to Mr. A by WERTHEIMER.

b. Mr. A advised Senior Investigator Tripodo who in turn advised me that he has placed bets with NORMIE WERTHEIMER through the use of this answering service on at least a weekly basis since at least July 1976 and as recently as during the week commencing December 12, 1976.

c. Mr. A advised Senior Investigator Tripodo who in turn advised me that he calls the telephone number of the answering service between the hours of 11:30 a.m. and 2:00 p.m. and 5:30 p.m. and 8:00 p.m.; that the same female voice answers the phone, that he leaves his code name with the female, hangs up and receives a return call from NORMIE WERTHEIMER within a few minutes.

d. Mr. A personally knows WERTHEIMER and recognizes his voice.

e. Mr. A further advised that sometimes, and as recently as during the week commencing December 5, 1976, LOEWINGER has returned his call to the answering service number and has accepted wagers when WERTHEIMER is not available. Mr. A personally knows LOEWINGER and has recognized his voice.

f. From his conversations with LOEWINGER and WERTHEIMER as recently as during the first seven days of December 1976, Mr. A knows that this gambling operation handles well in excess of \$2,000 on most days.

g. Mr. A advised that WERTHEIMER normally settles up with bettors on Mondays and Tuesdays.

h. On numerous occasions since at least July 1976 and as recently as during the month of December 1976 Mr. A has observed and overheard discussions between WERTHEIMER and SAM LEVENTHAL concerning the laying off of bets by LEVENTHAL with the LOEWINGER operation.

17. Mr. B is a personal acquaintance of MORRIS MELAVSKY (also known as MOE) who is involved in the gambling operation described herein, and, as such, has had conversations with MELAVSKY concerning gambling operations over the past eight months, the most recent of which took place during the first seven days of December, 1976.

a. Mr. B advised me that he was told by MELAVSKY during the summer of 1976 that "Goo-Goo" LOEWINGER is by far the biggest-volume

book-maker in the Catskill Mountain area, and that NORMIE WERTHEIMER is his partner in this operation.

b. Mr. B advised me that MELAVSKY told Mr. B that LOEWINGER had several accounts out-of-state and in New York City.

c. Mr. B advised me that MELAVSKY told him during the summer of 1976 that he (MELAVSKY) lays-off with LOEWINGER on a regular basis.

18. Special Agents of the Federal Bureau of Investigation have conducted physical surveillance of ROBERT LOEWINGER and NORMAN WERTHEIMER since June 1976. It has been determined from these surveillances that LOEWINGER is the owner/manager of Men's World/Boy's Town Clothing Store, 221 Broadway, Monticello, New York and that WERTHEIMER has no visible means of employment.

a. WERTHEIMER was observed by me or by Special Agents of the Federal Bureau of Investigation acting under my supervision either exiting or entering Men's World/Boy's Town Clothing Store, 221 Broadway, Monticello, at various times on the following dates: June 14; August 19 and 31; September 13; October 12; November 2 and 22; and December 2 and 13; WERTHEIMER was never observed exiting the store with any clothing or packages. On September 17, 1976, I observed WERTHEIMER in conversation with LOEWINGER directly in front of the store. On November 22, 1976 I observed WERTHEIMER entering the store empty-handed and leaving with a large white envelope.

- b. On October 18, 1976 and December 2, 1976 either I or a Special Agent of the Federal Bureau of Investigation acting under my supervision observed NORMAN WERTHEIMER meeting with HARRY FINEROW in Ellenville, New York.
- c. On November 29 and November 30, 1976, a Special Agent of the Federal Bureau of Investigation acting under my supervision observed WERTHEIMER entering the premises of the Nob Hill Colony, a summer bungalow colony located approximately two miles north of Monticello on Route 42, Kiamesha Lake, New York, at 5:50 P.M. and 5:32 P.M. respectively. WERTHEIMER was still at the above location at 6:30 P.M. on both evenings.
- d. On Saturday, December 11, 1976 a Special Agent of the Federal Bureau of Investigation acting under my supervision observed WERTHEIMER entering the premises of Nob Hill Colony at 12:45 P.M. and leaving the premises at 1:30 P.M.
- e. On Sunday, December 12, 1976 a Special Agent of the Federal Bureau of Investigation acting under my supervision observed ROBERT LOEWINGER entering the premises of Nob Hill Colony at 11:29 A.M. and leaving the premises at 2:05 P.M. NORMAN WERTHEIMER was observed by the Special Agent arriving at these premises at 12:22 P.M. and leaving at 2:06 P.M.

B. LEVENTHAL OPERATION

19. Mr. A has been previously referred to in Paragraph 16 above. Mr. A provided the following information to Senior Investigator Joseph Tripodo, New York State

Police.

a. During the first week of July, 1976, Mr. A advised Senior Investigator Tripodo who in turn advised me that he was aware of a gambling operation in Monticello being conducted by SAM LEVENTHAL which accepted wagers on horse races and sporting events. The telephone number used by this operation was 914-794-2597. Mr. A advised that he was placing bets with LEVENTHAL over this telephone.

b. In mid-August, 1976, Mr. A advised Senior Investigator Tripodo who in turn advised me that he was informed that the telephone number for the bookmaking operation was being changed to 914-794-5303 and that he subsequently placed bets over this telephone.

c. During the second week of September, 1976, Mr. A advised Senior Investigator Tripodo who in turn advised me that he was informed that LEVENTHAL had a second telephone number, 914-794-8276, that Mr. A could call to place wagers.

d. During the last week of September 1976, Mr. A advised Senior Investigator Tripodo who in turn advised me that LEVENTHAL was no longer accepting wagers at either 914-794-5303 or 914-794-8276 and that he, Mr. A, did not know at what telephone number LEVENTHAL was then receiving wagers.

e. Mr. A advised Senior Investigator Tripodo who in turn advised me that as recently as during the week of December 5, 1976, he has observed and overheard discussions between NORMAN WERTHEIMER and SAM LEVENTHAL concerning the laying off of bets by LEVENTHAL with the LOEWINGER operation.

20. Mr. C is an acquaintance of SAM LEVENTHAL, who is involved in the gambling operation described herein. As such, Mr. C has had numerous conversations with LEVENTHAL, the most recent taking place during the week of December 12, 1976.

a. Mr. C advised me during the week of December 12, 1972 that he has placed wagers on sporting events with SAM LEVENTHAL on numerous occasions and as recently as the week of December 12, 1976.

b. Mr. C advised me that he has placed these recent wagers with LEVENTHAL at telephone number 914-794-8026. Mr. C knows LEVENTHAL and recognizes his voice.

c. Mr. C advised me that he has "settled-up" accounts with LEVENTHAL as recently as the second week of December 1976 at the social club on Jefferson Street in Monticello. Mr. C also advised that he has observed other bettors "settling-up" with LEVENTHAL at this location.

d. Mr. C advised me that he knows from his own betting activities that the wagering hours for the LEVENTHAL operation are approximately 6:00 p.m. through 7:30 p.m. Monday through Saturday and approximately 11:45 a.m. through 2:00 p.m. on Saturday and Sunday.

21. On August 9, 1976, Special Agent Frank J. Meyers was advised by the Security Officer of the New York Telephone Company and Special Agent Meyers in turn advised me that its records show that telephone 914-794-2597 is subscribed to by BOBBY PINCHUCK, 118 Terry Lane, Monticello, New York.

22. On July 12, 1976, a Special Agent of the Federal Bureau of Investigation acting under my supervision entered the premises known as 116-121 Terry Lane, Sleepy Hollow Apartments, Monticello, New York. This agent observed six mailboxes at this location, one bearing the name "R. PINCHUCK".

23. I and other Special Agents of the Federal Bureau of Investigation acting under my supervision have conducted physical surveillances of LEVENTHAL since July 2, 1976. On July 2, 1976 at approximately 12:00 noon, I observed LEVENTHAL entering the Sleepy Hollow Apartments, Terry Lane, Monticello, New York. LEVENTHAL remained until approximately 1:00 p.m. On July 7, 1976, a Special Agent of the Federal Bureau of Investigation acting under my supervision observed LEVENTHAL at the same apartment complex entering building 116-121 at approximately 5:45 p.m. and remaining until about 7:30 p.m.

24. On July 15, 20, 21, 27; and August 4, 7, 9, 12 and 15, LEVENTHAL was observed by me or by Special Agents of the Federal Bureau of Investigation acting under my supervision either entering or exiting the Sleepy Hollow Garden Apartment complex at appropriate bookmaking hours during the early afternoon and early evening.

25. On August 23, 1976, Special Agent Frank J. Meyers was advised by the Security Officer of the New York

Telephone Company and Special Agent Meyers in turn advised me that its records reveal that telephone number 914-794-5303 is subscribed to by MIKE ROBBINS, Bungalow 11, Kesselman's Bungalows, Monticello, New York.

26. Between August 19 and September 11, 1976, LEVENTHAL was observed by me or by Special Agents of the Federal Bureau of Investigation acting under my supervision either entering or exiting Kesselman's Bungalow Colony, Forestburgh Road, Monticello, New York, at dates and times indicated below:

<u>DATE</u>	<u>ARRIVAL</u>	<u>DEPARTURE</u>
August 19, 1976	11:49 a.m.	*
August 24, 1976	*	1:03 p.m.
August 28, 1976	*	7:25 p.m.
August 30, 1976	11:55 a.m.	1:03 p.m.
August 30, 1976	5:45 p.m.	*
August 31, 1976	*	7:30 p.m.
September 3, 1976	*	7:29 p.m.
September 9, 1976	5:57 p.m.	7:29 p.m.
September 11, 1976	*	2:00 p.m.

27. On every occasion between July 13, 1976 and September 9, 1976 when LEVENTHAL departed either the Sleepy Hollow Garden apartments or the Kesselman Bungalow Colony following evening bookmaking hours, he went directly to a pay telephone booth located at the intersection of Dillon Road and Forestburgh Road, Monticello. These observations were made by me or by Special Agents of the Federal Bureau of Investigation acting under my supervision. The dates and arrival and departure times at this telephone booth are as follows:

* Asterisk indicates that no surveillance was conducted during the applicable time period.

<u>DATE</u>	<u>ARRIVAL</u>	<u>DEPARTURE</u>
July 13, 1976	7:38 p.m.	7:45 p.m.
July 15, 1976	7:29 p.m.	7:43 p.m.
July 20, 1976	7:31 p.m.	7:35 p.m.
July 21, 1976	7:30 p.m.	7:37 p.m.
July 22, 1976	7:33 p.m.	7:36 p.m.
July 27, 1976	7:29 p.m.	7:34 p.m.
August 7, 1976	7:32 p.m.	7:37 p.m.
August 18, 1976	7:32 p.m.	7:35 p.m.
August 28, 1976	7:28 p.m.	7:37 p.m.
August 31, 1976	7:30 p.m.	7:35 p.m.
September 3, 1976	7:30 p.m.	7:34 p.m.
September 9, 1976	7:29 p.m.	7:33 p.m.

On two of the above occasions I was in a position close enough to observe LEVENTHAL make a telephone call, hang up, and wait in the booth for a return call. On both occasions he was observed writing on a small slip of white paper while he was in the telephone booth.

28. On eight of the twelve dates shown above in Paragraph 27 LEVENTHAL drove directly from the telephone booth to 425 West Broadway, Monticello, New York, where a person identified as DAVID MORGANSTEIN met LEVENTHAL. These meetings never lasted longer than one minute. On one occasion, I observed MORGANSTEIN handing LEVENTHAL a small white paper.

29. A Special Agent of the Federal Bureau of Investigation acting under my supervision was advised by the Security Officer of the New York Telephone Company that its records show that telephone number 914-794-8026, is a residential telephone currently subscribed to by Gil Hellinger, 74 Florida Building, the Delano Hotel, Old Liberty Road, Monticello, New York.

30. Since October 4, 1976 either I or Special Agents of the Federal Bureau of Investigation acting under my supervision observed LEVENTHAL entering and exiting the premises of the Delano Hotel on Old Liberty Road, Monticello, at dates and times indicated below:

<u>DATE</u>	<u>ARRIVAL</u>	<u>DEPARTURE</u>
October 4, 1976	11:53 a.m.	1:05 p.m.
October 5, 1976	11:56 a.m.	1:02 p.m.
October 6, 1976	5:54 p.m.	7:37 p.m.
October 8, 1976	5:51 p.m.	*
October 14, 1976	11:55 a.m.	1:07 p.m.
October 14, 1976	5:58 p.m.	7:32 p.m.
December 6, 1976	5:51 p.m.	7:36 p.m.
December 7, 1976	5:50 p.m.	7:35 p.m.
December 8, 1976	5:55 p.m.	7:34 p.m.
December 12, 1976	11:57 a.m.	2:07 p.m.

31. On each occasion in December 1976 when LEVENTHAL departed the premises of the Delano Hotel following evening bookmaking hours, Special Agents of the Federal Bureau of Investigation observed him driving to 425 West Broadway, Monticello, New York, the residence of DAVID MORGANSTEIN. He never remained at this location for more than one minute.

32. Special Agents of the Federal Bureau of Investigation and personnel of the Monticello Police Department who advised me made the following additional observations of SAM LEVENTHAL:

a. On Monday, August 16, 1976 at 8:44 A.M.

I observed LEVENTHAL enter the residence of

* Asterisk indicates no surveillance was conducted during the applicable time period.

ROBERT LOEWINGER at 15 Hammond Street, Monticello, New York and remain there for approximately two minutes.

b. On Monday, August 30, 1976 a Special Agent of the Federal Bureau of Investigation acting under my supervision observed LEVENTHAL and LOEWINGER meeting in LOEWINGER's vehicle in Monticello near the intersection of Broadway and Jefferson Street at about 9:00 A.M.

c. On the following dates and times I or personnel of the Monticello Police Department who advised me observed LEVENTHAL exit LOEWINGER's clothing store at 221 Broadway, Monticello, New York: Saturday, October 16, 1976 at about 9:00 A.M.; Tuesday, November 16, 1976 at about 10:00 A.M.; and Saturday, December 11, 1976 at about 10:00 A.M.

C. MELAVSKY OPERATION

33. On June 23, 1976 Special Agent Frank J. Meyers was advised by the New York Telephone Company and Special Agent Meyers in turn advised me that its records show that:

a. Telephone numbers 914-647-3442 and 914-647-3412 are subscribed to by Lewis Frielich, Apartment 29B, Nevele Road, Ellenville, New York.

b. Telephone numbers 914-647-6691 and 914-647-6358 are subscribed to by Morris Melavsky, 16 Sandra Street, Ellenville, New York.

34. a. During the first week of August 1976, a Special Agent of the Federal Bureau of Investigation acting under my supervision entered the south door of the western - most building (hereafter "the West Building") of the Country Club Arms apartment complex on Nevele Road in Ellenville, New York. He observed a mail box, number 29, bearing the name "L. Frielich".

b. The 1976-1977 Telephone Directory for the Sullivan County area (including Ellenville) lists the home address of MORRIS MELAVSKY as 16 Sandra Street, Ellenville, New York and telephone number 914-647-6691. 16 Sandra Street is a one story single dwelling which MELAVSKY has been observed by me and by other Special Agents of the Federal Bureau of Investigation acting under my supervision entering on numerous occasions and which is known to be MELAVSKY's residence.

35. Mr. D is personally acquainted with MORRIS MELAVSKY (also known as MOE) and LEWIS FRIELICH (also known as LARRY). Mr. D has provided the following information to affiant.

a. Mr. D advised me during December 1976 that he has been placing wagers on horse races and sporting events for the past eight months at telephone numbers 914-647-3442 and 914-647-3412. Mr. D was advised of these numbers by MOE MELAVSKY, who also told Mr. D that this was part of a gambling operation being conducted by himself and HARRY FIERSON.

b. Mr. D advised me that he has placed wagers at one of these telephone numbers as recently

as the week of December 12, 1976. Mr. D advised that he places wagers at these numbers with LARRY FRIELICH, who is an employee of MELAVSKY's and whose voice Mr. D recognizes.

c. I showed Mr. D an arrest photograph of Lewis Frielich, Country Club Arms, Ellenville, New York, which had been provided to me by the New York State Police and Mr. D identified the person in the photograph as being the individual he knew as LARRY FRIELICH.

d. Mr. D advised me that he knows from his own betting activities that this operation is conducted from approximately 11:45 a.m. until 1:30 p.m. each afternoon, with the exception of Saturdays and Sundays. On these two days, the operation accepts wagers up until 2:00 p.m. In addition, Mr. D knows that this operation also accepts wagers in the evening from approximately 5:45 p.m. through 8:00 p.m., Monday through Saturday.

36. Mr. B is an acquaintance of HARRY FINEROW and MORRIS MELAVSKY (also known as MOE). Mr. B has previously been referred to in Paragraph 17 of this affidavit.

a. Mr. B advised me during December 1976 that MOE MELAVSKY and HARRY FINEROW have been conducting a bookmaking operation in the Ellenville, New York area for at least five years. Mr. B knows this because of his gambling activities and conversations he has had with FINEROW and MELAVSKY over the past three years. The most recent conversation was during the second week in December 1976.

b. Mr. B advised me that he has placed wagers directly with MELAVSKY at his home telephones, numbers 914-647-6691 and 914-647-6358, as recently as the second week of December 1976. Mr. B knows from his betting activities that MELAVSKY accepts wagers on these telephones between the approximate hours of 6:00 p.m. and 8:00 p.m. on Monday through Saturday and from approximately 12 noon until 2:00 p.m. on Saturday and Sunday.

c. Mr. B advised me during October 1976 that he recently had observed both MELAVSKY and FINEROW "settle up" with bettors at the Ellenville Taxi Stand, 78 Center Street, Ellenville. Mr. B has settled up with MELAVSKY personally at this location.

d. Mr. B advised me during the summer of 1976 that MELAVSKY told him that FINEROW handled most of the bookmaking at the Tamarack Lodge in Greenfield Park, New York, and that FINEROW also ran card and dice games at "floating" locations.

e. MELAVSKY has also told Mr. B who in turn has advised me as recently as the last week in November 1976 that "BOBBY" HANNON and "LARRY" PUTZER collect wagers for the bookmaking operation.

37. Mr. E is a person who is acquainted with both HARRY FINEROW and MORRIS MELAVSKY (also known as MON).

a. As recently as the week of December 5, 1976, FINEROW advised Mr. E who in turn advised me that he (FINEROW) and MELAVSKY

were still partners in a bookmaking operation in the Ulster County, New York area.

b. Mr. E has advised me that he has placed bets on horse races and sporting events in person with MELAVSKY and FINEROW in the Ellenville area on several occasions, the most recent being in mid December, 1976.

c. Mr. E advised me during the summer of 1976 that he has personally observed and has been told by MELAVSKY that his taxi company drivers sometimes pick up wagers and pay off bettors at the local hotels and resorts.

d. In early November 1976, ROBERT HANNON (also known as BOBBY) told Mr. E who in turn advised me that he (HANNON) was working for HARRY FINEROW in FINEROW's bookmaking operation.

38. Either I or Special Agents of the Federal Bureau of Investigation acting under my supervision have conducted surveillances of MORRIS MELAVSKY, HARRY FINEROW and LEWIS a/k/a "LARRY" FRIELICH since at least June 28, 1976, as follows:

a. On June 28 at approximately 10:45 a.m., FRIELICH drove from the Country Club Arms apartments to the Ellenville Taxi office at 78 Center Street, Ellenville, and entered the office. This taxi company is operated by MORRIS MELAVSKY.

b. On July 15 and July 26, 1976, MELAVSKY and FINEROW met in the Ellenville Taxi office, 78 Center Street, Ellenville.

c. On July 23, 1976, FRIELICH left the Country Club Arms apartments at approximately

3:08 p.m. and was observed with FINEROW on Center Street at approximately 3:26 p.m.

d. On August 22, 1976, FRIELICH exited the south door of the West Building of the Country Club Arms apartments at approximately 2:01 p.m. carrying a manila folder. FRIELICH was met beside his car by ROBERT HANNON who was observed giving U. S. currency to FRIELICH after FRIELICH took notebook-sized sheets of white paper from the folder and wrote on one sheet. Following this meeting, FRIELICH drove directly to MELAVSKY's residence at 16 Sandra Street, Ellenville, New York and went inside.

e. On August 29, 1976, FRIELICH and HANNON exited the south door of the West Building of the Country Club Arms apartments together at approximately 2:12 p.m. Both men entered a vehicle registered to HANNON and drove directly to MELAVSKY's residence, where FRIELICH exited the vehicle and went inside.

f. On September 1, 1976, FRIELICH exited the south door of the West Building of the Country Club Arms apartments at approximately 7:29 p.m. He was picked up at the entrance to the apartment complex by an unknown white male, who drove directly to MELAVSKY's residence. Both men exited the vehicle and went inside.

g. On September 10, 1976, at approximately 1:40 p.m., FRIELICH was observed exiting the south door of the West Building of the Country Club Arms and entering his vehicle.

h. On September 22, 1976, FRIELICH and HANNON exited the south door of the West Building of the Country Club Arms apartments at approximately 7:48 p.m. Both men entered their respective vehicles, and FRIELICH drove directly to MELAVSKY's residence.

i. On September 30, 1976, at approximately 8:10 p.m. and again on October 7, 1976, at approximately 7:52 p.m. FRIELICH exited the south door of the West Building of the Country Club Arms apartments and drove directly to MELAVSKY's residence.

j. On November 22, 1976, FRIELICH was observed exiting the south door of the West Building of the Country Club Arms apartments at approximately 8:02 p.m.

k. On December 1, 2, 3, 4 and 5, FRIELICH's vehicle, a black Chevrolet, New York license 86-ARX, was observed parked in the Country Club Arms apartment complex during the applicable bookmaking hours of either 12:00 noon through 1:30 p.m. or 6:00 p.m. through 8:00 p.m.

l. On December 2, 1976, FRIELICH was observed entering the south door of the West Building in the Country Club Arms apartment complex at approximately 5:58 p.m., and exiting the same building at approximately 7:35 p.m., at which time he drove directly to MELAVSKY's residence.

m. On December 3, 1976, HARRY FINEROW arrived at the Country Club Arms apartment complex at approximately 7:25 p.m. and entered the building where FRIELICH resides. He remained until 8:40 p.m.

n. On December 5, 1976, FINEROW arrived at this apartment complex at approximately 2:45 p.m.

o. On December 13, 1976, at approximately 6:00 p.m. FRIELICH was observed entering the Country Club Arms apartment complex at a high rate of speed, parking his vehicle, and then running to the south door of the West Building which he entered. At 8:02 p.m., FINEROW arrived at the Country Club Arms apartments and entered the south door of the West Building. FINEROW departed the West Building at 8:20 p.m.

p. MORRIS MELAVSKY was observed leaving his taxi office at 78 Center Street, Ellenville, and driving to his residence at 16 Sandra Street, Ellenville, on the following dates at the below-listed times:

Thursday	December 2, 1976	6:30 p.m.
Friday,	December 3, 1976	6:00 p.m.
Saturday,	December 4, 1976	12:30 p.m.
Sunday,	December 5, 1976	12:00 p.m.
Monday,	December 13, 1976	6:00 p.m.

39. Special Agents of the Federal Bureau of Investigation have conducted the following additional surveillance at 1 Market Street, Ellenville, New York. This building

houses the Market Street Social Club:

- a. On October 18, 1976 I observed NORMAN WERTHEIMER, HARRY FINEROW, and LEWIS a/k/a "LARRY" FRIELICH to be in the building at 1 Market Street at the same time. I observed WERTHEIMER and FINEROW leaving the building together.
 - b. On November 15, 1976 I observed WERTHEIMER, FINEROW, FRIELICH, and MELAVSKY to be in the building at the same time.
 - c. On December 2, 1976 a Special Agent of the Federal Bureau of Investigation acting under my supervision observed WERTHEIMER and FINEROW leave this building together and enter FINEROW's vehicle.
 - d. On December 3, 1976 a Special Agent of the Federal Bureau of Investigation acting under my supervision observed WERTHEIMER and MELAVSKY to be inside this building at the same time.
 - e. On December 13, 1976, I observed WERTHEIMER and FINEROW to be inside this building at the same time.
40. a. On August 12, 1976 I observed FRIELICH and SAM LEVENTHAL to be in the County Seat Social Club, 46 Jefferson Street, Monticello, New York at the same time.
- b. At about 4:30 P.M. on August 10, 1976 I observed FRIELICH and LEVENTHAL leave County Seat Social Club together and go with each other for several seconds getting into their vehicles.

Specific Factual Information Obtained
by the Federal Bureau of Investigation
from Examination of Government Records

41. ROBERT LOEWINGER, in the past, has been arrested in excess of ten times and has been convicted three times for violations of the New York State criminal laws outlawing the operation of a gambling business.

42. NORMAN WERTHEIMER, in the past, has been arrested four times and convicted once for violations of the New York State criminal laws outlawing the operation of a gambling business.

43. SAM LEVENTHAL, in the past, has been arrested nine times and convicted twice for violations of the New York State criminal laws outlawing the operation of a gambling business.

44. MORRIS MELAVSKY, in the past, has been arrested twice for violations of the New York State criminal laws outlawing the operation of a gambling business.

MINIMIZATION

45. In order to minimize the likelihood of intercepting conversations that do not pertain to the offenses specified in paragraph 2, supra, affiant proposes that in addition to customary minimization procedures, interception of wire communications emanating to and from the telephone lines and instruments set forth below, shall occur only during normal betting hours as determined from advice of informant bettors, from my knowledge and experience and that of other Special Agents in the investigation of gambling violations, and from physical surveillance conducted during this investigation, as follows:

<u>TELEPHONE NUMBER</u>	<u>DAY OF WEEK</u>	<u>HOURS</u>
914-794-3244	Monday through Saturday	11:15 a.m. to 2:15 p.m. 5:15 p.m. to 8:15 p.m.
	Sunday	11:15 a.m. to 2:15 p.m.

Affidavit

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914-794-8026	Monday through Friday	5:30 p.m. to 8:00 p.m.
	Saturday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:00 p.m.
	Sunday	11:30 a.m. to 2:15 p.m.
914-647-3442 and 914-647-3412	Monday through Friday	11:30 a.m. to 1:45 p.m. 5:30 p.m. to 8:15 p.m.
	Saturday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:15 p.m.
	Sunday	11:30 a.m. to 2:15 p.m.
914-647-6691 and 914-647-6358	Monday through Friday	5:45 p.m. to 8:15 p.m.
	Saturday	11:45 a.m. to 2:15 p.m. 5:45 p.m. to 8:15 p.m.
	Sunday	11:45 a.m. to 2:15 p.m.

CONCLUSION

46. Based upon my six years of experience in the conduct of gambling investigations, and the experience of other Special Agents of the Federal Bureau of Investigation with whom I have discussed the facts of this investigation, it is my opinion that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, and ROBERT HANNON are actively engaged in the conduct of an illegal sports gambling business. This conclusion is predicated upon the informant information contained herein, and upon the patterns of conduct revealed by surveillances. These patterns of conduct are entirely consistent with the operation of a large scale, integrated sports gambling business involving laying-off among separate operations. Specifically I make reference to the apparent hours of business kept by LEVENTHAL, FRIELICH and MELAVSKY, the use of a telephone answering service by LOEWINGER and WERTHEIMER, and the repeated shifts in locations of operation by LEVENTHAL during the period of this investigation. These

activities are entirely consistent with the patterns of other gambling operations which attempt to make detection more difficult.

Need For Electronic Surveillance

47. Based upon my experience in conducting gambling investigations, and the experience of other Special Agents of the Federal Bureau of Investigation with whom I have discussed the facts of this investigation, and upon all of the information contained herein, I believe that the interception of wire communications requested herein is the only available investigative technique remaining which has a reasonable likelihood of securing the evidence needed to prove beyond a reasonable doubt that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, DAVID MORGANSTEIN, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIEDLICH, and ROBERT HANNON and others as yet unknown are engaged in the operation of an illegal gambling business in violation of Title 18, United States Code, Section 1955, and are conspiring to do so in violation of Title 18, United States Code, Section 371. The factors contributing to my belief are set forth in the following paragraphs.

48. The confidential reliable informants previously described (Mr. A, Mr. B, Mr. C, Mr. D, and Mr. E) are unwilling to testify or have their identities disclosed because of the possibility of retribution and their fear of being physically harmed.

49. Surveillances of the members of the gambling conspiracy do not establish beyond a reasonable doubt their participation in the operation of an illegal gambling business. Continued physical surveillance offers little chance of obtaining the necessary evidence. At best, it

could offer only additional observations of the type described above in this affidavit. At worst, additional surveillance would arouse the suspicions of the suspects, rendering their ultimate detection more difficult. The likelihood of arousing suspicions is particularly strong in the relatively small, rural towns involved in this investigation where agents and police are known to residents. Outsiders, at least during the winter months, are easily spotted.

50. My experience and the experience of other Special Agents of the Federal Bureau of Investigation have shown that gambling raids and searches of gamblers and their gambling establishments have not in the past resulted in the gathering of physical or other evidence necessary to prove all the elements of the offense. My experience and the experience of other Special Agents who work on gambling cases have shown that gamblers frequently do not keep permanent records. Such records that are kept usually do not reveal the details of the lay-off operation or the actual indentities of the participants, or their roles in the operation.

51. Although the names of several bettors with the LOEWINGER, LEVENTHAL and MELAVSKY operations have been obtained, I am convinced that an investigative contact at this time would prove unproductive because it would serve only to alert the participants as to the existence of and the scope of the investigation.

52. Additionally, I and other Special Agents of the Federal Bureau of Investigation have given thorough consideration to infiltration of this group. However, based on my experience in this investigation and the experience of other Special Agents knowledgeable in conducting sports

gambling operations, it does not appear that this procedure would be likely to succeed. A penetration of the LOEWINGER operation was attempted in the summer of 1973 by a Special Agent of the Federal Bureau of Investigation, but was unsuccessful.

53. Telephone toll records would be of little use. Toll records for telephones being utilized in a bookmaking operation, even when they reveal contacts between the principals, do not reveal the nature or the purpose of the contacts. Further, a review of the 1976-1977 Telephone Directory for the Sullivan County area reveals that telephone calls between the 794 (Monticello) and 647 (Ellenville) exchanges are local calls. Only calls placed by the operator at customer request as well as calls outside the local calling area are billed on the toll statement as separate items. Since the wire rooms and other locations developed by investigation lie within the local calling area, calls between these locations will not be reflected on the bills of the respective subscribers.

54. I have discussed with Assistant United States Attorney T. Gorman Reilly subpoenaing the individuals known to be involved. He advised that the subjects of this case are unlikely to voluntarily testify since they face criminal prosecution. He further advised that he has considered grants of immunity to compel testimony from the subjects of this investigation, but believes that there is insufficient knowledge of the roles of various individuals, the identities of their co-conspirators, and the scope of their overall knowledge of the operation, to make a decision at this time. Even if witnesses were granted immunity, sufficient facts are not available at this time to measure the truthfulness of the compelled testimony.

55. The use of a pen register alone without an accompanying Title III electronic surveillance order is not an available alternative. As a result of the decision of the Second Circuit in Application of the United States in the matter of an Order Authorizing the Use of a Pen Register, 538 F.2d 956 (1976), petition for certiorari pending, the New York Telephone Company will not provide certain services and equipment essential to the installation of a pen register. It will provide such services and equipment only in connection with court authorized electronic surveillance.

56. In view of the above it is manifest that normal avenues of investigation have been attempted and have failed, are unlikely to succeed if tried, or appear to be too dangerous to be attempted. Interception of wire communications is the only reasonable and possible investigative procedure remaining which can furnish the required quantum of evidence needed to prove that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, ROBERT HANNON, and others as yet unknown have conducted and are conducting an illegal gambling business within the State of New York; which illegal gambling business involves five or more persons and has a gross revenue of \$2,000 or more in any single day or has been in substantially continuous operation in excess of thirty (30) days, thereby being in violation of Title 18, Section 1955, United States Code, and conspiracy to commit such offenses in violation of Title 18, Section 371, United States Code. Interception is necessary for wire communications of persons as more specifically set forth in paragraph 3d, supra, to and from telephone numbers 914-794-3244, subscribed to by Debra Scialabba, 123 Terry Lane,

Apartment 123, Monticello, New York; 914-794-8026, subscribed to by Gil Hellinger, 74 Florida Building, The Delano Hotel, Old Liberty Road, Monticello, New York; 914-647-3442 and 941-647-3412, subscribed to by Lewis Frielich, Apartment 29B, Nevele Road, Ellenville, New York; and telephone numbers 914-647-6691 and 914-647-6358, subscribed to by Morris Melavsky, 16 Sandra Street, Ellenville, New York.

57. Inasmuch as the illegal gambling business described herein is a continuing conspiracy, the evidence sought through the interception of wire communications emanating to and from the above locations will be obtained on a continuing basis on several days succeeding the first interception of communications, which is the objective of this request. Therefore, it is requested that these interceptions not be terminated until the roles of the above listed subjects, and others as yet unknown, their method of operation and the full nature and scope of the conspiracy involved herein is determined or for a period of twenty (20) days from the date of the proposed Order, whichever is earlier. If the telephone numbers used in conducting this gambling operation are changed, an amended affidavit will be resubmitted as the new telephone numbers are determined.

Section 802 of Title VIII, entitled "Syndicated Gambling of the Organized Crime Control Act 1970," Public Law 91-452, 91st Congress, approved October 15, 1970, amended Chapter 95, Title 18, United States Code, by adding a new section, Section 1955, "Prohibition of Illegal Gambling Businesses." Section 801 of Title VIII of the Act contains a special finding that illegal gambling involves widespread use of and has an effect upon interstate commerce and the facilities thereof.

WHEREFORE, I submit that the information supplied by the reliable informants and the information developed in the course of the investigation, as set forth in all the preceeding paragraphs, provide sufficient facts to establish that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVASKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, ROBERT HANNON, and others as yet unknown, have been, are, and will continue to commit offenses involving the use of the locations and numbers set forth in paragraph 57 above in a conspiracy to conduct an illegal gambling enterprise in violation of Sections 1955 and 371 of Title 18, United States Code.

CARL W. AMADITZ
Special Agent
Federal Bureau of Investigation

Subscribed and Sworn to before
me this day of December, 1976

Order Authorizing Interception

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE APPLICATION : Misc. No. M19-97
OF THE UNITED STATES FOR AN ORDER : ORDER AUTHORIZING
AUTHORIZING THE INTERCEPTION OF : INTERCEPTION OF
WIRE COMMUNICATIONS : WIRE COMMUNICATIONS
:
-----x

TO: Special Agents for the Federal Bureau of Investigation,
United States Department of Justice

Application under oath having been made before me by Assistant United States Attorney T. GORMAN REILLY, an "investigative or law enforcement officer" as defined in Section 2510(7) of Title 18, United States Code, for an order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matters set forth therein, the Court finds:

(a) there is probable cause to believe that ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELSON, ROBERT HANNON, and others as yet unknown have committed and are committing offenses involving wire communications to conduct an illegal sports gambling in violation of Article 225 of the New York State Penal Law, involving five or more persons, and that has a gross revenue of \$2,000 in any single day and has been and remains in substantial, continuous operation for a period in excess of thirty (30) days, thereby being in violation of Title 18, United States Code, Section 1955, and a conspiracy to commit such offenses in violation of Title 18, United States Code, Section 371.

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(b) there is probable cause to believe that particular wire communications of ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELANSKY, LEWIS A/K/a "LARRY" FRIELICH, and others as yet unknown concerning these offenses will be obtained through the interception, authorization for which has been applied for. In particular, these wire communications will reveal the identities and roles of all participants in the illegal gambling business, the places, telephone lines, instruments and locations used in furtherance of the gambling business, the amounts of monies wagered, the amounts of monies owed to or by bettors and other participants in the gambling business, the distribution of contraband monies and records obtained by and used in the illegal gambling business, the methods of record keeping and the meaning thereof, the methods of operation used by the participants in the gambling business, and the full nature and scope of the conspiracy. In addition, the communications are expected to constitute admissible evidence of the offenses.

(c) normal investigative procedures either have been tried and have failed or reasonably appear unlikely to succeed if continued, or reasonably appear unlikely to succeed if tried.

(d) there is probable cause to believe that the following telephone lines and instruments have been used, are being used, and will continue to be used by the following persons in the commission of the above described offenses:

- (1) 914-794-3244 located at 123 Terry Lane, Apartment 123 Monticello, New York, subscribed to by Debra Lalabba, and used by ROBERT LOEWINGER, NORMAN WERTHEIMER,

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AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244,
and others as yet unknown;

(2) 914-794-8026 located at 74 Florida Building,
The Delano Hotel, Old Liberty Road, Monticello, New York,
subscribed to by Gil Hellinger, and used by SAM LEVINTHAL
and others as yet unknown;

(3) & (4) 914-647-3442 and 914-647-3412, located
at Apartment 29B, Nevele Road, Ellenville, New York, sub-
scribed to by Lewis Frielich, and used by LEWIS a/k/a "LARRY"
FRIELICH and others as yet unknown;

(5) & (6) 914-647-6691 and 914-647-6358, located
at 16 Sandra Street, Ellenville, New York, subscribed to by
MORRIS MELAVSKY, and used by MORRIS MELAVSKY, and others as
yet unknown.

WHEREFORE, it is hereby ordered that Special
Agents of the Federal Bureau of Investigation, United States
Department of Justice, are authorized, pursuant to applica-
tion authorized by the Attorney General of the United States,
the Honorable Edward H. Levi, to exercise the power conferred
on him by Section 2516 of Title 18, United States Code, to
intercept wire communications of the below listed persons
and others as yet unknown, concerning the above-described
offenses to and from the following telephones:

(1) 914-794-3244 located at 123 Terry Lane,
Apartment 123 Monticello, New York, subscribed to by Debra
Scialabba, and used by ROBERT LOEWINGER, NORMAN WERTHEIMER,
AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244,
and others as yet unknown;

(2) 914-794-8026 located at 74 Florida Building,
The Delano Hotel, Old Liberty Road, Monticello, New York,
subscribed to by Gil Hellinger, and used by SAM LEVINTHAL
and others as yet unknown;

(3) & (4) 914-647-3442 and 914-647-3412, located at Apartment 29B, Nev-le Road, Ellenville, New York, subscribed to by Lewis Frielich, and used by LEWIS a/k/a "LARRY" FRIELICH and others as yet unknown;

(5) & (6) 914-647-6691 and 914-647-6358, located at 16 Sandra Street, Ellenville, New York, subscribed to by MORRIS MELAVSKY, and used by MORRIS MELAVSKY and others as yet unknown.

Such interceptions shall not automatically terminate when the types of communication described above in paragraph (b) have first been obtained but shall continue until communications are intercepted which reveal the manner in which ROBERT LOEWINGER, NORMAN WERTHEIMER, AN UNKNOWN FEMALE WHO ANSWERS TELEPHONE NUMBER 914-794-3244, SAM LEVENTHAL, MORRIS MELAVSKY, HARRY FINEROW, LEWIS a/k/a "LARRY" FRIELICH, ROBERT HANNOY, and others as yet unknown, participate in the illegal gambling business, the identities and roles of their confederates and their associates in the illegal gambling business, the places, telephone lines, instruments and locations used in furtherance of the gambling business, the amounts of monies wagered, the amounts of monies owed to or by bettors and other participants in the gambling business, the distribution of contraband monies and records obtained by and used in the illegal gambling business, the methods of record keeping and the meaning thereof, the methods of operation used by the participants in the gambling business, and the full nature and scope of the conspiracy or for a period of twenty (20) days from the date of this Order, whichever is earlier.

Order Authorizing Interception

45a

IT IS FURTHER ORDERED that the New York Telephone Company, a communication carrier as defined in Section 2510(10) of Title 18, United States Code, shall furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the service that such carrier is according the person whose communications are to be intercepted, the furnishing of such facilities or technical assistance by the New York Telephone Company to be compensated for by the applicant at the prevailing rates.

PROVIDING THAT, this authorization to intercept wire communications shall be executed as soon as practicable after signing of this Order and shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under Chapter 119 of Title 18, United States Code, and must terminate upon attainment of the authorized objective or, in any event, at the end of twenty (20) days from the date of this Order.

PROVIDING FURTHER, that interception shall occur only as follows:

TELEPHONE NUMBER	DAY OF WEEK	HOURS
914-794-3244	Monday through Saturday	11:15 a.m. to 2:15 p.m. 5:15 p.m. to 8:15 p.m.
	Sunday	11:15 a.m. to 2:15 p.m.
914-794-8026	Monday through Friday	5:30 p.m. to 8:00 p.m.
	Saturday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:15 p.m.
	Sunday	11:30 a.m. to 2:15 p.m.
914-647-3442 and 914-647-3412	Monday through Friday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:15 p.m.
	Saturday	11:30 a.m. to 2:15 p.m. 5:30 p.m. to 8:15 p.m.
	Sunday	11:30 a.m. to 2:15 p.m.

Order Authorizing Interception

46a

<u>TELEPHONE NUMBER</u>	<u>DAY OF WEEK</u>	<u>HOURS</u>
914-647-6691 and 914-647-6358	Monday through Friday	5:45 p.m. to 8:15 p.m.
	Saturday	11:45 a.m. to 2:15 p.m. 5:45 p.m. to 8:15 p.m.
	Sunday	11:45 a.m. to 2:15 p.m.

PROVIDING ALSO, that T. GORMAN REILLY shall provide the Court with a report on or about the fifth, tenth and fifteenth day following the date of this Order showing what progress has been made toward achievement of the authorized objective and the need for continued interception.

UNITED STATES DISTRICT JUDGE

Dated: New York, New York
December , 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

77 CRIM.

- v - :

INDICTMENT

ROBERT LOEWINGER a/k/a "Bobby", :
a/k/a "Goo Goo", NORMAN WERTHEIMER :
a/k/a "Normie", SAM LEVENTHAL :
a/k/a "Sam the Cop", HARRY FINEROW, :
LEWIS A. FRIELICH a/k/a "Larry", :
LAWRENCE PUTZER a/k/a "Larry", :
MORRIS MELAVSKY a/k/a "Moe", :
MAC FENSTER, RAY ADAMIAK, :
WILLIAM DE MASE a/k/a "Bill", and :
LESTER FINE a/k/a "Les", :

77 Cr.

Defendants. :

-----X

COUNT ONE

The Grand Jury charges:

1. From on or about January 1, 1976, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo", NORMAN WERTHEIMER a/k/a "Normie", SAM LEVENTHAL a/k/a "Sam the Cop", HARRY FINEROW, LEWIS A. FRIELICH a/k/a "Larry", LAWRENCE PUTZER a/k/a "Larry", MORRIS MELAVSKY a/k/a "Moe", MAC FENSTER, RAY ADAMIAK, WILLIAM DE MASE a/k/a "Bill", and LESTER FINE a/k/a "Les", the defendants, did unlawfully, wilfully and knowingly combine, conspire, confederate and agree, together and with each other, and with diverse other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

2. It was part of said conspiracy that said defendants and co-conspirators would unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports and race horse betting gambling business (a) which was a violation of the laws of the State of New York, to wit, Penal Law, Sections 225.05 and 225.10, and (b) which involved five or more

persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) which was and remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of substantially in excess of two thousand dollars (2,000) in any single day.

3. Among the means whereby the defendants carried out the conspiracy were the following:

a. the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo", NORMAN WERTHEIMER a/k/a "Normie", HARRY FINEROW, and MORRIS MELAVSKY a/k/a "Moe", controlled, directed, managed and supervised the illegal gambling business which operated at various locations in and around Monticello, New York, Kiamesha Lake, New York, Ellenville, New York, Bronx County, New York and Staten Island, New York;

b. the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie", operated, conducted and managed wire rooms in the premises of 14 Burton Avenue, Monticello, New York and in the premises of Bungalow #6, Nob Hill Bungalow Colony, Kiamesha Lake, New York, which wire rooms were a part of the illegal gambling business;

c. the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie", established and used a telephone answering service in Monticello, New York for the purpose of receiving bets and line or point spread information and for the purpose of concealing the location and telephone numbers of their wire rooms;

d. the defendant SAM LEVENTHAL a/k/a "Sam the Cop", operated, conducted and managed a series of wire rooms at various and successive locations in Sullivan County, New York, including Room 74, Floridian Building, Delano Motor Lodge, Old Liberty Road, Monticello, New York, New York.

e. the defendant SAM LEVENTHAL a/k/a "Sam the Cop", relayed all bets he received at his various wire rooms to the defendants, ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie" at their room.

f. the defendants HARRY FINEROW, MORRIS MELAVSKY a/k/a "Moe", LEWIS A. FRIELICH a/k/a "Larry" and LAWRENCE PUTZER a/k/a "Larry" operated, conducted and managed a wire room at Apartment 29B, Country Club Arms Apartment, Nevele Road, Ellenville, New York, which wire room was a part of the illegal gambling business;

g. the defendant MORRIS MELAVSKY a/k/a "Moe" operated, conducted and managed a separate wire room at his residence, 16 Sandra Street, Ellenville, New York, which wire room was a part of the illegal gambling business;

h. the defendants WILLIAM DE MASE a/k/a "Bill" and LESTER FINE a/k/a "Les" operated, conducted and managed a wire room in the premises of Apartment 5-F, 749 East 231st Street, Bronx, New York, which wire room was a part of the illegal gambling business;

i. the defendant MAC FENSTER received sports and race horse bets and in the course of his participation in the illegal gambling business, relayed these bets to the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie" at their wire room;

j. the defendant RAY ADAMIAK received sports and race horse bets and, in the course of his participation in the illegal gambling business, relayed these bets to SAM LEVENTHAL a/k/a "Sam the Cop" at his wire room which bets in turn were relayed by the defendant SAM LEVENTHAL, a/k/a "Sam the Cop" to the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER a/k/a "Normie" at their wire room;

k. the wire rooms, including those specified herein, cooperated with and assisted each other in the operation of the illegal gambling business by:

(i) accepting sports and race horses wagers from individual bettors not named herein who would telephone the various wire rooms or the answering service maintained by the defendants LOEWINGER and WERTHEIMER to place their bets;

(ii) exchanging information concerning odds (commonly known as the "line") on sporting events;

(iii) relaying and advising each other of recent betting results;

(iv) placing and receiving large wagers with each other so that no single wire room would be exposed to a large loss (commonly known as "laying off");

(v) reviewing amounts of money owed to or by bettors or other participants in the illegal gambling business (commonly known as the "pay and collect") as a result of their betting activity.

1. some or all of the defendants would, on a weekly basis, collect the losses from and pay the winnings to individual bettors doing business with their respective wire rooms (commonly known as the "settle up"); the defendant HARRY FINEROW would travel to the area of Scranton, Pennsylvania on a weekly basis to collect the losses from and pay the winnings to individual bettors; in addition the defendants would settle up with each other on a weekly basis.

m. all of the defendants and their co-conspirators shared in the proceeds of the illegal gambling business, which exceeded \$150,000 in gross wagers each week.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed the following overt acts in the Southern District of New York and elsewhere:

1. On or about August 30, 1976 the defendant SAM LEVENTHAL a/k/a "Sam the Cop" was on the premises of Kesselman's Bungalow Colony, Forestburgh Road, Monticello, New York.

2. On or about September 1, 1976 the defendants LEWIS A. FRIELICH a/k/a "Larry" and MORRIS MELAVSKY a/k/a "Moe" were together in the premises of 16 Sandra Street, Ellenville, New York.

3. On or about December 3, 1976 the defendants HARRY FINEROW and LEWIS A. FRIELICH a/k/a "Larry" were together in the premises of Apartment 29B, Country Club Arms apartments, Nevele Road, Ellenville, New York.

4. On or about December 12, 1976 the defendants ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" and NORMAN WERTHEIMER were together on the premises of the Nob Hill Bungalow Colony, Kiamesha, New York.

5. On or about January 5, 1977 the defendant NORMAN WERTHEIMER a/k/a "Normie" placed a call to telephone number 914-794-3244 and had a conversation.

6. On or about January 5, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a call to telephone number 914-794-3244 and had a conversation.

7. On or about January 5, 1977 the defendant MORRIS MELAVSKY a/k/a "Moe" placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH a/k/a "Larry".

8. On or about January 6, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

9. On or about January 6, 1977 the defendant RAY ADAMIAK placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

10. On or about January 8, 1977 the defendant NORMAN WERTHEIMER a/k/a "Normie" placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/ka/ "Sam the Cop".

11. On or about January 9, 1977 the defendant RAY ADAMIAK placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

12. On or about January 9, 1977 the defendant NORMAN WERTHEIMER a/k/a "Normie" placed a telephone call to and had a conversation with the defendant HARRY FINEROW.

13. On or about January 14, 1977 the defendant LAWRENCE PUTZER a/k/a "Larry", placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH, a/k/a "Larry".

14. On or about March 9, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant SAM LEVENTHAL a/k/a "Sam the Cop".

15. On or about March 9, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant MAC FENSTER.

16. On or about March 9, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH a/k/a "Larry".

17. On or about March 10, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant LEWIS A. FRIELICH a/k/a "Larry".

18. On or about March 11, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant LESTER FINE a/k/a "Les".

19. On or about March 19, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant MAC FENSTER.

20. On or about March 13, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with a person known as "Star".

21. On or about March 16, 1977 the defendant ROBERT LOEWINGER, a/k/a "Bobby" a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant WILLIAM DE MASE a/k/a "Bill".

22. On or about March 17, 1977 the defendant ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo" placed a telephone call to and had a telephone conversation with the defendant LESTER FINE a/k/a "Les."

23. On or about March 19, 1977 the defendant NORMAN WERTHEIMER a/k/a Normie placed a telephone call to and had a conversation with the defendant MAC FENSTER.

24. On or about March 21, 1977 the defendant ROBERT LOEWINGER a/k/a Bobby, a/k/a "Goo Goo" placed a telephone call to and had a conversation with the defendant NORMAN WERTHEIMER a/k/a "Normie".

25. On or about March 23, 1977 the defendants WILLIAM DE MASE a/k/a "Bill" and LESTER FINE a/k/a "Les" were together in the premises of Apartment 5-F, 749 East 231st Street, Bronx, New York.

(Title 18, United States Code, Section 371.)

COUNT TWO

The Grand Jury further charges:

From on or about January 1, 1976, and substantially continuously thereafter, up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ROBERT LOEWINGER a/k/a "Bobby", a/k/a "Goo Goo", NORMAN WERTHEIMER a/k/a "Normie", SAM LEVENTHAL a/k/a "Sam the Cop", HARRY FINEROW, LEWIS A. FRIELICH a/k/a "Larry", LAWRENCE PUTZER a/k/a "Larry", MORRIS MELAVSKY a/k/a "Moe", MAC FENSTER, RAY ADAMIAK, WILLIAM DE MASE a/k/a "Bill", and LESTER FINE

a/k/a "Les", the defendants, did unlawfully, wilfully and knowingly conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports and race horse wagering business (a) which was in violation of the laws of the State of New York, Penal Law Sections 225.05 and 225.10, and (b) which involved five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) which was and remained in substantially continuous operation for a period in excess of thirty days and had a gross revenue of two thousand dollars (\$2,000) in any single day.

(Title 18, United States Code, Sections 1955 and 2)

COUNT THREE

The Grand Jury further charges:

On or about the 27th day of January 1977, in the Southern District of New York, HARRY FINEROW, the defendant, while being engaged in the business of betting and wagering unlawfully, knowingly and wilfully did use a wire communication facility, to wit a telephone, for the transmission in interstate commerce of bets and wagers and information assisting in the placing of bets and wagers on a sporting event and contest, and for the transmission of a wire communication which entitled the recipient to receive money and credit as a result of bets and wagers and for information assisting in the placing of bets and wagers.

(Title 18, United States Code, Section 1084)

COUNT FOUR

The Grand Jury further charges:

On or about the 14th day of January 1977, in the Southern District of New York, LEWIS A. FRIELICH a/k/a "Larry",

the defendant, while being engaged in the business of betting and wagering, unlawfully, knowingly and wilfully did use a wire communication facility, to wit a telephone, for the transmission in interstate commerce of bets and wagers and information assisting in the placing of bets and wagers on a sporting event and contest, and for the transmission of a wire communication which entitled the recipient to receive money and credit as a result of bets and wagers and for information assisting in the placing of bets and wagers.

(Title 18, United States Code, Section 1084)

FOREMAN

ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

-against-

MEMORANDUM
DECISION

ROBERT LOEWINCER a/k/a "Bobby",
a/k/a "Goo Goo", NORMAN
WERTHEIMER a/k/a "Normie",
SAM LEVENTHAL a/k/a "Sam the Cop",
HARRY FINEROW, LEWIS A. FRIELICH
a/k/a "Larry", LAWRENCE PUTZER
a/k/a "Larry", MORRIS MELAVSKY
a/k/a "Moe", MAC FENSTER, RAY ADAMIAC,
WILLIAM DeMASE a/k/a "Bill", and
LESTER FINE a/k/a "Les",

77 Cr. 426

... Defendants. :

----- X

CANNELLA, D.J.:

Motions by defendants Loewinger, Leventhal,
Melavsky, Finerow, Putzer, Frielich, Adamiak, DeMase and
Fine, to suppress the contents of intercepted wire commun-
ications, Fed. R. Crim. P. 41(f); 18 U.S.C. § 2518(10)(a),
are denied.^{1/}

^{1/} There being no controverted material issues of fact,
the holding of a hearing is unnecessary. Defendants'
conclusory claims of illegal wiretapping have been refuted
by Government affidavits. See, e.g., United States v. Van
Orsdell, 521 F.2d 1323, 1325 (2d Cir. 1975), cert. denied,
423 U.S. 1059 (1976).

Motions by defendants Fenster and Melavsky to dismiss the indictment, are denied.

Motion by defendant Melavsky for production of grand jury minutes, is denied.

Motions by defendants Leventhal, DeMase and Fine, to suppress certain unidentified items seized on March 23, 1977, are denied.

WIRETAP EVIDENCE

Moving defendants claim that the district court erred in issuing the wiretap orders of December 30, 1976^{2/} and March 9, 1977 because the Government failed to comply with the provisions of 18 U.S.C. § 2518 regarding probable cause and particularized need for the electronic surveillance. The Court finds instead that the Government made a more than sufficient showing on all counts.

Probable Cause

In order for a judge to issue a wiretap order, he must find, inter alia, that there is probable cause to

^{2/} The gist of defendants' motions concern the validity of the December 30, 1976 order. There is no real dispute that, on the basis of the March 9 affidavit, there was probable cause for the issuance of the second order. Defendants, of course, contend that the March 9 affidavit should be stricken since its contents were derived from interceptions authorized by the December 30 order.

believe "that an individual is committing, has committed, or is about to commit" one of certain enumerated offenses. 18 U.S.C. § 2518(3)(a). One such offense concerns the operation of an illegal gambling business, 18 U.S.C. § 1955. See 18 U.S.C. § 2516(1)(c). Thus, in order to have authorized the interception of wire communications, the issuing judges must have found probable cause to believe the existence of an "illegal gambling business," as that term is defined in 18 U.S.C. § 1955(b)(1). But see 18 U.S.C. § 1955(c).

On the basis of an affidavit by F.B.I. Special Agent Amaditz, Judge Griesa signed the wiretap order of December 30, 1976; on the basis of a subsequent affidavit by Agent Amaditz, in addition to the five, ten and fifteen day reports filed with the Court, Judge van Pelt Bryan signed the March 9, 1977 order. "[T]he fact that the issuing judge[s] found probable cause is itself a substantial factor tending to uphold the validity of the order[s] so issued." *United States v. Becker*, 334 F. Supp. 546, 549 (S.D.N.Y. 1971) (Weinfeld, J.), *aff'd*, 461 F.2d 230 (2d Cir. 1972), vacated on other grounds, 417 U.S. 903 (1974). Additionally, rather than scrutinizing each individual statement contained in a supporting affidavit,

the court should view the affidavit "as a whole and 'in a practical and commonsense fashion.'" *United States v. Steinberg*, 525 F.2d 1126, 1130 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976), quoting S. Rep. No. 1097, 90th Cong., 2d Sess., reprinted in [1968] U.S. Code Cong. & Ad. News 2190.

As part of their argument that probable cause did not exist for the issuance of the orders, defendants claim that the informants' reliability was not sufficiently established. The Court disagrees.

The December 30 affidavit established the reliability of the informants through past furnishings of truthful information and through corroboration of their present information by both other informants and government personnel. This is sufficient, e.g., *United States v. Esposito*, 423 F. Supp. 908, 911 (S.D.N.Y. 1976) (Weinfeld, J.), and distinguishes the situation from "a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." *Spinelli v. United States*, 393 U.S. 410, 416 (1969).

Defendants next argue that the December 30 affidavit did not establish probable cause to believe that an "illegal gambling business" existed. Section

1955(b) (1) defines this term to mean

a gambling business which--

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

(Emphasis added). Subdivision (c) of section 1955, however, provides that

[i]f five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of \$2,000 in any single day shall be deemed to have been established.

Thus, in order to uphold the wiretap orders of December 30, 1976 and March 9, 1977, the Court must find that there was probable cause to believe: (1) that five or more persons were involved in a single gambling operation; and (2) that the business was in operation for at least two

successive days. In determining the correctness of Judge Griesa's finding, the Court may draw reasonable inferences from the facts and circumstances contained in the affidavit in support of the warrant, see United States v. Williams, 459 F.2d 909, 913 & n.4 (6th Cir. 1972). In this regard, the Court is mindful that "[p]robable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction." Adams v. Williams, 407 U.S. 143, 149 (1972).

To comply with the five-person requirement, it was not necessary to show that five or more persons acted contemporaneously so long as each participated at some time during the operative period. See United States v. Marrifield, 515 F.2d 877 (5th Cir.), cert. denied, 423 U.S. 1021 (1975). The December 30, 1976 affidavit of Agent Amaditz establishes three interlocking segments of a widespread gambling network in which more than five persons were involved. For the purpose of simplifying the document, Amaditz called these segments the Loewinger operation, the Leventhal operation and the Melavsky operation. Informant information and physical surveillance showed cooperation among the three segments during a substantial period of time leading up to and including

December of 1976.^{3/} This included information as to laying off of bets between members of different segments of the business. See, e.g., *United States v. Thomas*, 508 F.2d 1200, 1205 (8th Cir.), cert. denied, 421 U.S. 947 (1975); *United States v. DeCesaro*, 502 F.2d 604, 611 (7th Cir. 1974).

Accordingly, the Court finds that the December 30, 1976 Amaditz affidavit establishes probable cause to believe that five or more persons were involved in a single gambling operation.

There is also ample support in the first Amaditz affidavit for the finding that the gambling business operated for at least two successive days. This triggers the statutory presumption of probable cause that the operation had gross revenue exceeding \$2,000 in any single day. 18 U.S.C. § 1955(c); *United States v. Fino*, 478 F.2d 35, 37 (2d Cir. 1973), cert. denied, 417 U.S. 918 (1974).

Particularized Need

Moving defendants argue, alternatively, that

^{3/} The Court therefore rejects the claim that the staleness of the information contained in Amaditz's affidavit precludes a finding of probable cause.

the December '30 Amaditz affidavit failed to establish the Government's particularized need to intercept wire communications. Section 2518(1)(c) of Title 18 provides that a wiretap application must include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous." This does not mean, however, that electronic surveillance must be the Government's last resort. See United States v. Fury, 554 F.2d 522, 530 (2d Cir. 1977). The Government must merely indicate the basis of their belief that, under the particular circumstances, other investigative techniques will not succeed.

The Court finds that the Government has met its burden in this regard. The December 30, 1976 affidavit sets forth, to indicate the difficulty with alternative investigatory procedures, such factors as: (1) the unavailability of informants to testify because of fear; (2) the fruitlessness of continued physical surveillance; (3) the potential danger of direct contact with the suspects; and (4) the previous failure to infiltrate the gambling operation. Additionally, informant and other information disclosed the participants'

dependence on telephonic communications for the operation of their business. See *United States v. Steinberg*, 525 F.2d 1126, 1130 (2d Cir. 1975), cert. denied, 425 U.S. 971 (1976). These statements meet the requirements of § 2518(1)(c).

It is also argued that the second wiretap order should not have been issued because the first order had achieved its objectives. The Court disagrees. The March 9, 197 Amaditz affidavit states the necessity of continued electronic surveillance due to the manner in which Loewinger and Wertheimer operated.

SUFFICIENT EVIDENCE TO INDICT

Defendants Fenster and Melavsky claim that there was insufficient evidence before the grand jury to indict them. Melavsky also requests an order permitting him to inspect the grand jury minutes. The applications are denied in all respects.

The Supreme Court has stated that "an indictment valid on its face is not subject to challenge on the ground that the grand jury acted on the basis of inadequate or incompetent evidence" *United States v. Calandra*, 414 U.S. 338, 345 (1974); accord, *Costello v. United States*, 350 U.S. 359, 362-63 (1956). This

well-established principle precludes defendants' first request. The alternative reasons pressed by Melavsky for dismissal of the indictment are totally unsubstantiated.

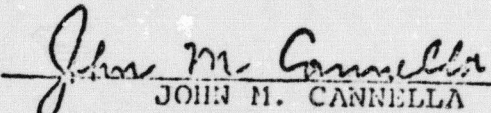
Melavsky's application to inspect the minutes of the grand jury proceedings is foreclosed by Fed. R. Crim. P. 6(e) in that the defendant has not established a particularized need. See United States v. Weinstein, 511 F.2d 622, 627 (2d Cir.), cert. denied, 422 U.S. 1042 (1975).

ITEMS SEIZED MARCH 23, 1977

Moving defendants request a hearing on the admissibility of evidence seized pursuant to search warrants executed on March 23, 1977. There is no indication, however, of the basis for the motion. This being the case, defendants' request for a hearing on this issue is denied.

Accordingly, the instant motions are denied.

SO ORDERED.


JOHN M. CANNELLA
United States District Judge

Dated: New York, N.Y.
October 6, 1977.

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